

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SILVON S. SIMMONS,

Plaintiff,

vs.

**NOTICE OF MOTION TO  
COMPEL DISCOVERY**

**17-CV-6176-FPG-MWP**

JOSEPH M. FERRIGNO, II, SAMUEL  
GIANCURSIO, MARK WIATER,  
CHRISTOPHER MUSCATO, ROBERT  
WETZEL, MICHAEL L. CIMINELLI,  
JOHN DOES 1-20, CITY OF ROCHESTER,  
SHOTSPOTTER, INC., SST, INC.,  
JOHN DOES 21-30 and PAUL C. GREENE,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed Affidavit of Charles F. Burkwit, duly sworn to the 26<sup>th</sup> day of July, 2021, and the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Marian W. Payson, at the United States Courthouse, 100 State Street, Rochester, New York at a Motion Term hereof, on the \_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day or as soon thereafter as counsel may be heard, for an order pursuant to FRCP 37(a) compelling Defendants Joseph M. Ferrigno, II, Samuel Giancursio, Mark Wiater, Christopher Muscato, Robert Wetzel, Michael L. Ciminelli, John Does 1-20 and City of Rochester to produce complete materials responsive to paragraphs 1 (dd) and 1 (ee) of Plaintiff's First Request For Production of Documents, Electronically Stored Information and Tangible

Things, compelling said Defendants to produce Defendants Joseph M. Ferrigno, II, Michael L. Ciminelli, Officers Whitney Unrath, Michael DiMauro, Joseph Zampatori, William Gallagher, Sergeant Kenneth Coniglio and a representative from the City of Rochester's Information Technology Department, one with knowledge of the Automated Vehicle Locator System (AVLS) and the storage and retention of such data for City of Rochester police vehicles, for their depositions upon oral examination, imposing sanctions against the City Defendants and/or their counsel and awarding reasonable expenses incurred including attorney's fees caused by the refusal of the City Defendants to comply with this Court's October 13, 2020 Decision & Order, January 13, 2021 Order and Amended Scheduling Order and May 26, 2021 Decision & Order pursuant to FRCP 16(f), 37(b)(2)(A) and (C), issuing an Amended Scheduling Order extending the Amended Scheduling Order (Document 85) deadlines by 60 days pursuant to FRCP 16 (b)(4) and for such other and further relief as the Court may deem just and proper; and

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7(a)(1) of the Local Rules of this Court, the Plaintiff intends to file and serve reply papers and therefore, pursuant to Rule 7(b)(2)(B), Defendants are required to serve responding papers, if any, at least seven (7) days prior to the return date of this motion.

Dated: July 26, 2021

BURKWIT LAW FIRM, PLLC

s/Charles F. Burkwit  
Charles F. Burkwit, Esq.  
Attorney for Plaintiff Silvon S. Simmons  
16 East Main Street, Suite 450  
Rochester, New York 14614  
(585) 546-1588  
burkwitesq@aol.com

TO: TIMOTHY R. CURTIN  
CORPORATION COUNSEL  
John M. Campolieto, Esq., of counsel  
Attorneys for Defendants Joseph M. Ferrigno, II,  
Samuel Giancursio, Mark Wiater, Christopher  
Muscato, Robert Wetzels, Michal L. Ciminelli,  
John Does 1-20 and City of Rochester  
City Hall Room 400A, 30 Church Street  
Rochester, New York 14614-7741  
(585) 428-7410  
[john.campolieto@cityofrochester.gov](mailto:john.campolieto@cityofrochester.gov)

BARCLAY DAMON, LLP  
Paul A. Sanders, Esq.  
Attorneys for Defendants Shotspotter, Inc.  
SST, Inc. and Paul C. Green  
2000 Five Star Bank Plaza  
100 Chestnut Street  
Rochester, New York 14604  
(585) 295-4426  
[PSanders@barclaydamon.com](mailto:PSanders@barclaydamon.com)

LAW OFFICES OF JORDAN TRENT JONES  
Jordan Trent Jones, Esq., of counsel to Barclay Damon, LLP  
2268 Westborough Blvd., Suite 302  
South San Francisco, California 94080  
(415) 418-0380  
[jtjones@jtrentloneslaw.com](mailto:jtjones@jtrentloneslaw.com)

KILPATRICK TOWNSEND & STOCKTON, LLP  
Benjamin M. Kleinman, Esq., of counsel  
to Barclay Damon, LLP  
Two Embarcadero Center, Suite 1900  
San Francisco, California 94111  
(415) 576-0200  
[bkleinman@kilpatricktownsend.com](mailto:bkleinman@kilpatricktownsend.com)